

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<b>Application of:</b> Robert Kissel	<b>Group No.:</b> 3764
<b>Serial No.:</b> 10/688,251	<b>Atty. Docket No.:</b> 74445-002
<b>Filed:</b> 10/17/2003	
<b>For:</b> Exercise Resistance System	<b>Examiner:</b> Donnelly, Jerome W.

MAIL STOP AMENDMENT  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO ELECTION REQUIREMENT**

HONORABLE SIR:

Responsive to the official communication of October 11, 2006, Applicant submits the following Election.

It is not believed that extensions of time are required beyond those, which may otherwise be provided for in documents accompanying this Amendment. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned for under 37 C.F.R. § 1.136(a), and any fees required therefore are hereby authorized to be charged to our Deposit Account 08-3460.

***ELECTION***

Applicant hereby elects Examiner designated invention of Group I, drawn to the apparatus. Within the invention Group I, Applicant elects the species of Group I, Figs. 1 and 2. Claims 1-9, 11-34, 38 and 39, are directed to the apparatus of Group I, Figs. 1 and 2.

Applicant withdraws from prosecution the claims directed to the non-elected species, the method, until such time as a genus claim is allowed.

The Examiner has restricted the apparatus claims from the method claims and with regard to the apparatus claims, the Examiner has followed the practice set forth by 37 CFR §1.146: "In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable." According to this practice, any restriction to the elected species is conditional (i.e., only "if no claim to the genus is found to be allowable"). The Examiner has concluded that the claims directed to the apparatus of Figs. 1 and 2 are a different species from the claims directed to Figs. 3 and 4 or Fig. 5 or Fig. 6. Accordingly, Applicant has made the election specified above.

**Conclusion**

It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

*Oct 3, 2006*



By: Rebecca J. Brandau, Reg. No. 33,654  
Husch & Eppenger, LLC  
190 Carondelet Plaza  
St. Louis, MO 63105  
314-480-1500  
314-480-1505 FAX